

THE HONORABLE RICARDO S. MARTINEZ

THE HONORABLE THERESA L. FRICKE

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UTHERVERSE GAMING LLC,

Plaintiff,

v.

EPIC GAMES, INC.,

Defendant.

Case No. 2:21-cv-00799-RSM-TLF

**UTHERVERSE GAMING LLC'S  
ANSWER TO EPIC GAMES, INC'S  
AMENDED COUNTERCLAIM**

Plaintiff/Counterclaim-Defendant Utherverse Gaming LLC ("Utherverse Gaming") hereby submits this Answer to the Amended Counterclaim (ECF No. 287, Amended Answer to Complaint for Patent Infringement and Counterclaims, pp. 21-38 ("Amended Counterclaim")) of Defendant/Counterclaim-Plaintiff Epic Games, Inc. ("Epic").

Each of the paragraphs below correspond to the same-numbered paragraphs in the Amended Counterclaim. Utherverse Gaming denies all allegations in the Amended Counterclaim, whether express or implied, that are not specifically admitted below. Any factual allegation below is admitted only as to the specific admitted facts, not as to any purported conclusions, characterizations, implications, or speculations that arguably follow from the admitted facts. Utherverse Gaming denies that Epic is entitled to the relief requested or any other relief.

1 Utherverse Gaming responds to the Amended Counterclaim as follows:

2 **I. NATURE OF THE ACTION**

3 1. Utherverse Gaming admits that the Amended Counterclaim purports to set forth  
4 counterclaims for declaratory judgment of invalidity and non-infringement of United States Patent  
5 Nos. 8,276,071 (the “071 Patent”), 8,812,954 (the “954 Patent”), 9,123,157 (the “157 Patent”),  
6 and 9,724,605 (the “605 Patent”), arising pursuant to the Declaratory Judgment Act, 28 U.S.C. §  
7 2201, *et seq.* and the patent laws of the United States, 35 U.S.C. § 1, *et seq.* The allegations in  
8 Paragraph 1 of the Amended Counterclaim otherwise sets forth legal conclusions to which no  
9 response is required. Except as expressly admitted herein, Utherverse Gaming denies the  
10 allegations arising out of the counterclaims referenced in Paragraph 1 of the Amended  
11 Counterclaim.

12 **II. THE PARTIES**

13 2. Utherverse Gaming is without knowledge or information sufficient to form a belief  
14 as to the truth or falsity of the allegations contained in Paragraph 2 of the Amended Counterclaim  
15 concerning the principal place of business of Epic and therefore Utherverse Gaming denies those  
16 allegations. Utherverse Gaming admits that Epic is a corporation organized and existing under the  
17 laws of the State of Maryland.

18 3. Utherverse Gaming admits that Utherverse Gaming LLC is a limited liability  
19 company organized and existing under the laws of the State of Delaware, with a principal place of  
20 business at 1740 Broadway, 15th Floor, New York, New York 10019.

21 **III. JURISDICTION AND VENUE**

22 4. Utherverse Gaming admits that the Amended Counterclaim purports to set forth an  
23 action under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and under the patent laws of  
24 the United States, 35 U.S.C. §§ 1, *et seq.* Utherverse Gaming denies that Epic is entitled to any  
25 requested relief thereunder.

26 5. Utherverse Gaming admits that this Court has subject matter jurisdiction over this

1 action pursuant to 28 U.S.C. §§ 1331, 1338(a), and 2201(a).

2 6. The allegations in Paragraph 6 of the Amended Counterclaim include legal  
3 conclusions to which no response is required. Utherville Gaming does not otherwise contest the  
4 personal jurisdiction of the Western District of Washington.

5 7. Utherville Gaming admits that a substantial part of the events giving rise to the  
6 Amended Counterclaim occurred in this District, including the filing of the underlying action  
7 against Epic for infringement of the Asserted Patents.

#### 8 IV. COUNTERCLAIMS

##### 9 FIRST COUNTERCLAIM

##### 10 (Non-Infringement of U.S. Patent No. 8,276,071)

11 8. Utherville Gaming incorporates herein by reference the contents of each of the  
12 preceding Paragraphs of its Answer.

13 9. Utherville Gaming admits that it has asserted claims against Epic Games for  
14 infringement of the '071 Patent. Utherville Gaming has accused certain events hosted by Epic's  
15 videogame Fortnite, including events featuring Travis Scott, Marshmello, and a Star Wars trailer  
16 premiere, of infringing the '071 Patent. Utherville Gaming also contends that subsequent events  
17 including a performance by Ariana Grande infringe the '071 Patent and that other similar events  
18 are likely to infringe in the future (all of the foregoing collectively referred to as the "Fortnite  
19 Events"). The remainder of Paragraph 9 of the Amended Counterclaim are legal conclusions to  
20 which no response is required. Except as expressly admitted herein, Utherville Gaming denies  
21 any other allegation contained in Paragraph 9 of the Amended Counterclaim.

22 10. The allegations in Paragraph 10 of the Amended Counterclaim are legal  
23 conclusions to which no response is required. To the extent a response is required, Utherville  
24 Gaming denies the allegations contained in Paragraph 10 of the Amended Counterclaim.

25 11. The allegations in Paragraph 11 of the Amended Counterclaim are legal  
26 conclusions to which no response is required. To the extent a response is required, Utherville

1 Gaming denies the allegations contained in Paragraph 11 of the Amended Counterclaim.

2 12. The allegations in Paragraph 12 of the Amended Counterclaim are legal  
3 conclusions to which no response is required. To the extent a response is required, Utherville  
4 Gaming denies the allegations contained in Paragraph 12 of the Amended Counterclaim, including  
5 but not limited to the suggestion that Epic avoids liability because a third party commits an element  
6 of the otherwise infringing activity at issue and that Epic is not responsible for the same.

7 13. The allegations in Paragraph 13 of the Amended Counterclaim are legal  
8 conclusions to which no response is required. To the extent a response is required, Utherville  
9 Gaming denies the allegations contained in Paragraph 13 of the Amended Counterclaim.

10 14. The allegations in Paragraph 14 of the Amended Counterclaim are legal  
11 conclusions to which no response is required. To the extent a response is required, Utherville  
12 Gaming denies the allegations contained in Paragraph 14 of the Amended Counterclaim.

13 15. The allegations in Paragraph 15 of the Amended Counterclaim are legal  
14 conclusions to which no response is required. To the extent a response is required, Utherville  
15 Gaming denies the allegations contained in Paragraph 15 of the Amended Counterclaim.

16 16. The allegations in Paragraph 16 of the Amended Counterclaim are legal  
17 conclusions to which no response is required. To the extent a response is required, Utherville  
18 Gaming denies the allegations contained in Paragraph 16 of the Amended Counterclaim.

19 **SECOND COUNTERCLAIM**  
20 **(Invalidity of U.S. Patent No. 8,276,071)**

21 17. Utherville Gaming incorporates herein by reference the contents of each of the  
22 preceding Paragraphs of its Answer to the Amended Counterclaim.

23 18. The allegations in Paragraph 18 of the Amended Counterclaim are legal  
24 conclusions to which no response is required. To the extent a response is required, Utherville  
25 Gaming denies the allegations contained in Paragraph 18 of the Amended Counterclaim.

26 19. The allegations in Paragraph 19 of the Amended Counterclaim are legal

1 conclusions to which no response is required. To the extent a response is required, Utherville  
2 Gaming denies the allegations contained in Paragraph 19 of the Amended Counterclaim.

3 20. The allegations in Paragraph 20 of the Amended Counterclaim are legal  
4 conclusions to which no response is required. To the extent a response is required, Utherville  
5 Gaming denies the allegations contained in Paragraph 20 of the Amended Counterclaim.

6 21. The allegations in Paragraph 21 of the Amended Counterclaim are legal  
7 conclusions to which no response is required. To the extent a response is required, Utherville  
8 Gaming denies the allegations contained in Paragraph 21 of the Amended Counterclaim.

9 22. The allegations in Paragraph 22 and its accompanying footnote 4 of the Amended  
10 Counterclaim are legal conclusions to which no response is required. To the extent a response is  
11 required, Utherville Gaming denies the allegations contained in Paragraph 22 and its  
12 accompanying footnote 4 of the Amended Counterclaim, including but not limited to the  
13 suggestion that aspects of the claims of the '071 Patent were conceived and reduced to practice by  
14 Robert Flesch and William Andrew, either as part of contract work that Flesch and Andrew  
15 performed for Brian and Gary Shuster's company Utherville Inc. or otherwise.

16 23. The allegations in Paragraph 23 of the Amended Counterclaim are legal  
17 conclusions to which no response is required. To the extent a response is required, Utherville  
18 Gaming denies the allegations contained in Paragraph 23 of the Amended Counterclaim, including  
19 but not limited to the suggestion that Flesch and Andrew conceived of and developed the  
20 instancing functionality in the '071 Patent. Epic's Amended Counterclaim states in footnote 5,  
21 referenced in Paragraph 23, "Epic makes these allegations without asserting that Flesch and  
22 Andrew were the first to do instancing,"<sup>1</sup> therefore, it does not follow that Flesch and Andrew  
23 conceived of and/or developed any instancing functionality. Utherville Gaming admits that in  
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25 <sup>1</sup> Epic previously admitted in this litigation that instancing functionality "was well known in the  
26 video game world by 2005," further discrediting its allegation that Flesch and/or Andrew  
"conceived of and developed" instancing functionality. *See* Defendant Epic Games, Inc.'s  
Motion to Dismiss for Failure to State a Claim, ECF No. 34, p. 16, n. 4.

2005 Brian and Gary Shuster contracted with Flesch and Andrew and their company Prototerra, Inc. to develop software for non-party Utherville Digital's Red Light Center, but denies the suggestion that the Prototerra codebase, any customization or modification to the Prototerra codebase, or any other result of the contracted work performed by Flesch and/or Andrew is the equivalent of the '071 Patent's "modeling . . . a plurality of parallel dimensions in a computer memory," "assigning ones of a plurality of avatars within the computer memory so that each of the plurality of avatars populates a respective one of the parallel dimensions," and "animating . . . avatars populating different ones of the parallel dimensions." The remainder of the allegations of Paragraph 23 of the Amended Counterclaim are denied. Flesch and Andrew were each deposed in this matter in April 2023 and testified under oath that neither was an inventor of nor contributed to any of the claims of the '071 Patent.

24. Utherville Gaming admits that Flesch and Andrew were listed as co-inventors along with Brian and Gary Shuster on provisional patent application no. 60/893,531 (the "'531 provisional"), to which the '071 Patent claims priority, and that Flesch and Andrew were listed as co-inventors along with Brian and Gary Shuster on Canadian application no. CA2685353 and PCT patent application no. WO/2008/109798. All other allegations in Paragraph 24 of the Amended Counterclaim are denied, including but not limited to the suggestion that the Shusters or anyone on their behalf filed any false affidavits with the Canadian Intellectual Property Office or otherwise.

25. The allegation in Paragraph 25 of the Amended Counterclaim is a legal conclusion to which no response is required. To the extent a response is required, Utherville Gaming denies the allegation contained in Paragraph 25 of the Amended Counterclaim.

### **THIRD COUNTERCLAIM (Non-Infringement of U.S. Patent No. 8,812,954)**

26. Utherville Gaming incorporates herein by reference the contents of each of the preceding Paragraphs of its Answer to the Amended Counterclaim.

27-34. Utherville Gaming admits that it previously asserted claims against Epic for

1 infringement of the '954 Patent. On February 16, 2023, the Parties filed a Joint Stipulated Motion  
2 for Entry of Judgment of Non-Infringement of U.S. Patent Nos. 8,812,954 and 9,123,157 and  
3 Dismissal without Prejudice of Related Affirmative Defenses and Counterclaims (ECF No. 179),  
4 in which, *inter alia*, Epic stipulated and agreed to the dismissal without prejudice of its Third  
5 Counterclaim. The Court accepted the Parties' stipulation and dismissed Epic's counterclaims  
6 pertaining to the '954 and '157 Patents on April 20, 2023 (ECF No. 199). Thus, Epic's Third  
7 Counterclaim is no longer active. The Parties have reserved all appellate rights arising from this  
8 action, including the right to appeal the Court's Claim Construction Order. Accordingly,  
9 Utherville Gaming reserves the right to amend its answer to this counterclaim should issues  
10 related to the '954 Patent be revived. To the extent that a response is required to Paragraphs 27-  
11 34 of the Amended Counterclaim, Utherville Gaming otherwise denies the allegations contained  
12 in Paragraphs 27-34.

13 **FOURTH COUNTERCLAIM**  
14 **(Invalidity of U.S. Patent No. 8,812,954)**

15 35. Utherville Gaming incorporates herein by reference the contents of each of the  
16 preceding Paragraphs of its Answer to the Amended Counterclaim.

17 36-40. On February 16, 2023, the Parties filed a Joint Stipulated Motion for Entry of  
18 Judgment of Non-Infringement of U.S. Patent Nos. 8,812,954 and 9,123,157 and Dismissal  
19 without Prejudice of Related Affirmative Defenses and Counterclaims (ECF No. 179), in which,  
20 *inter alia*, Epic stipulated and agreed to the dismissal without prejudice of its Fourth Counterclaim.  
21 The Court accepted the Parties' stipulation and dismissed Epic's counterclaims pertaining to the  
22 '954 and '157 Patents on April 20, 2023 (ECF No. 199). Thus, Epic's Fourth Counterclaim is no  
23 longer active. The Parties have reserved all appellate rights arising from this action, including the  
24 right to appeal the Court's Claim Construction Order. Accordingly, Utherville Gaming reserves  
25 the right to amend its answer to this counterclaim should issues related to the '954 Patent be  
26 revived. To the extent that a response is required to Paragraphs 36-40 of the Amended  
Counterclaim, Utherville Gaming denies the allegations contained in Paragraphs 36-40.



**FIFTH COUNTERCLAIM**  
**(Non-Infringement of U.S. Patent No. 9,123,157)**

41. Utherville Gaming incorporates herein by reference the contents of each of the preceding Paragraphs of its Answer to the Amended Counterclaim.

42-49. Utherville Gaming admits that it previously asserted claims against Epic for infringement of the '157 Patent. On February 16, 2023, the Parties filed a Joint Stipulated Motion for Entry of Judgment of Non-Infringement of U.S. Patent Nos. 8,812,954 and 9,123,157 and Dismissal without Prejudice of Related Affirmative Defenses and Counterclaims (ECF No. 179), in which, *inter alia*, Epic stipulated and agreed to the dismissal without prejudice of its Fifth Counterclaim. The Court accepted the Parties' stipulation and dismissed Epic's counterclaims pertaining to the '954 and '157 Patents on April 20, 2023 (ECF No. 199). Thus, Epic's Fifth Counterclaim is no longer active. The Parties have reserved all appellate rights arising from this action, including the right to appeal the Court's Claim Construction Order. Accordingly, Utherville Gaming reserves the right to amend its answer to this counterclaim should issues related to the '157 Patent be revived. To the extent that a response is required to Paragraphs 42-49 of the Amended Counterclaim, Utherville Gaming otherwise denies the allegations contained in Paragraphs 42-49.

**SIXTH COUNTERCLAIM**  
**(Invalidity of U.S. Patent No. 9,123,157)**

50. Utherville Gaming incorporates herein by reference the contents of each of the preceding Paragraphs of its Answer to the Amended Counterclaim.

51-55. On February 16, 2023, the Parties filed a Joint Stipulated Motion for Entry of Judgment of Non-Infringement of U.S. Patent Nos. 8,812,954 and 9,123,157 and Dismissal without Prejudice of Related Affirmative Defenses and Counterclaims (ECF No. 179), in which, *inter alia*, Epic stipulated and agreed to the dismissal without prejudice of its Sixth Counterclaim. The Court accepted the Parties' stipulation and dismissed Epic's counterclaims pertaining to the '954 and '157 Patents on April 20, 2023 (ECF No. 199). Thus, Epic's Sixth Counterclaim is no



1 longer active. The Parties have reserved all appellate rights arising from this action, including the  
2 right to appeal the Court's Claim Construction Order. Accordingly, Utherverse Gaming reserves  
3 the right to amend its answer to this counterclaim should issues related to the '157 Patent be  
4 revived. To the extent that a response is required to Paragraphs 51-55 of the Amended  
5 Counterclaim, Utherverse Gaming denies the allegations contained in Paragraphs 51-55.

6 **SEVENTH COUNTERCLAIM**  
7 **(Non-Infringement of U.S. Patent No. 9,724,605)**

8 56. Utherverse Gaming incorporates herein by reference the contents of each of the  
9 preceding Paragraphs of its Answer to the Amended Counterclaim.

10 57. Utherverse Gaming admits it has asserted claims against Epic for infringement of  
11 the '605 Patent. Utherverse Gaming has accused certain events hosted by Epic's videogame  
12 Fortnite, including events featuring Travis Scott, of infringing the '605 Patent. Utherverse Gaming  
13 also contends that subsequent events including a performance by Ariana Grande infringe the '605  
14 Patent and that other similar events are likely to infringe in the future. The remainder of Paragraph  
15 57 of the Amended Counterclaim are legal conclusions to which no response is required. Except  
16 as expressly admitted herein, Utherverse denies any other allegation contained in Paragraph 57 of  
17 the Amended Counterclaim.

18 58. The allegations in Paragraph 58 of the Amended Counterclaim are legal  
19 conclusions to which no response is required. To the extent a response is required, Utherverse  
20 Gaming denies the allegations contained in Paragraph 58 of the Amended Counterclaim.

21 59. The allegations in Paragraph 59 of the Amended Counterclaim are legal  
22 conclusions to which no response is required. To the extent a response is required, Utherverse  
23 Gaming denies the allegations contained in Paragraph 59 of the Amended Counterclaim.

24 60. The allegations in Paragraph 60 of the Amended Counterclaim are legal  
25 conclusions to which no response is required. To the extent a response is required, Utherverse  
26 Gaming denies the allegations contained in Paragraph 60 of the Amended Counterclaim, including  
but not limited to the suggestion that Epic avoids liability because a third party commits an element

1 of the otherwise infringing activity at issue and that Epic is not responsible for the same.

2 61. The allegations in Paragraph 61 of the Amended Counterclaim are legal  
3 conclusions to which no response is required. To the extent a response is required, Utherville  
4 Gaming denies the allegations contained in Paragraph 61 of the Amended Counterclaim.

5 62. The allegations in Paragraph 62 of the Amended Counterclaim are legal  
6 conclusions to which no response is required. To the extent a response is required, Utherville  
7 Gaming denies the allegations contained in Paragraph 62 of the Amended Counterclaim.

8 63. The allegations in Paragraph 63 of the Amended Counterclaim are legal  
9 conclusions to which no response is required. To the extent a response is required, Utherville  
10 Gaming denies the allegations contained in Paragraph 63 of the Amended Counterclaim.

11 64. The allegations in Paragraph 64 of the Amended Counterclaim are legal  
12 conclusions to which no response is required. To the extent a response is required, Utherville  
13 Gaming denies the allegations contained in Paragraph 64 of the Amended Counterclaim.

14 **EIGHTH COUNTERCLAIM**  
15 **(Invalidity of U.S. Patent No. 9,724,605)**

16 65. Utherville Gaming incorporates herein by reference the contents of each of the  
17 preceding Paragraphs of its Answer to the Amended Counterclaim.

18 66. The allegations in Paragraph 66 of the Amended Counterclaim are legal  
19 conclusions to which no response is required. To the extent a response is required, Utherville  
20 Gaming denies the allegations contained in Paragraph 66 of the Amended Counterclaim.

21 67. The allegations in Paragraph 67 of the Amended Counterclaim are legal  
22 conclusions to which no response is required. To the extent a response is required, Utherville  
23 Gaming denies the allegations contained in Paragraph 67 of the Amended Counterclaim.

24 68. The allegations in Paragraph 68 of the Amended Counterclaim are legal  
25 conclusions to which no response is required. To the extent a response is required, Utherville  
26 Gaming denies the allegations contained in Paragraph 68 of the Amended Counterclaim.

69. The allegations in Paragraph 69 of the Amended Counterclaim are legal

1 conclusions to which no response is required. To the extent a response is required, Utherville  
 2 Gaming denies the allegations contained in Paragraph 69 of the Amended Counterclaim.

3 70. The allegations in Paragraph 70 of the Amended Counterclaim are legal  
 4 conclusions to which no response is required. To the extent a response is required, Utherville  
 5 Gaming denies the allegations contained in Paragraph 70 of the Amended Counterclaim.

6 **NINTH COUNTERCLAIM**  
 7 **(Unenforceability of U.S. Patent No. 8,276,071 for Inequitable Conduct)**

8 71. The allegations in Paragraph 71 and its accompanying footnote 6 of the Amended  
 9 Counterclaim are legal conclusions to which no response is required. To the extent a response is  
 10 required, Utherville Gaming denies the allegations contained in Paragraph 71 and its  
 11 accompanying footnote 6 of the Amended Counterclaim, including but not limited to the  
 12 suggestion that Brian and Gary Shuster “deliberately misled” or “lied” to the USPTO regarding  
 13 inventorship of U.S. Patent Application No. 12/554,744 (the “744 Application”).

14 72. The allegations in Paragraph 72 of the Amended Counterclaim are legal  
 15 conclusions to which no response is required. To the extent a response is required, Utherville  
 16 Gaming denies the allegations contained in Paragraph 72 of the Amended Counterclaim, including  
 17 but not limited to the suggestion that Flesch and Andrew conceived of and developed the  
 18 instancing functionality in the '071 Patent. Epic's Amended Counterclaim states in footnote 7,  
 19 referenced in Paragraph 72, “Epic makes these allegations without asserting that Flesch and  
 20 Andrew were the first to do instancing,”<sup>2</sup> therefore, it does not follow that Flesch and Andrew  
 21 conceived of and/or developed any instancing functionality. Utherville Gaming admits that in  
 22 2005 Brian and Gary Shuster contracted with Flesch and Andrew and their company Prototerra,  
 23 Inc. to develop software for non-party Utherville Digital's Red Light Center, but denies the  
 24 suggestion that the Prototerra codebase, any customization or modification to the Prototerra

25 <sup>2</sup> Epic previously admitted in this litigation that instancing functionality “was well known in the  
 26 video game world by 2005,” further discrediting its allegation that Flesch and/or Andrew  
 “conceived of and developed” instancing functionality. *See* Defendant Epic Games, Inc.'s  
 Motion to Dismiss for Failure to State a Claim, ECF No. 34, p. 16, n. 4.

1 codebase, or any other result of the contracted work performed by Flesch and/or Andrew is the  
2 equivalent of the '071 Patent's "modeling . . . a plurality of parallel dimensions in a computer  
3 memory," "assigning ones of a plurality of avatars within the computer memory so that each of  
4 the plurality of avatars populates a respective one of the parallel dimensions," and "animating . . .  
5 avatars populating different ones of the parallel dimensions." The remainder of the allegations of  
6 Paragraph 72 of the Amended Counterclaim are denied. Flesch and Andrew were each deposed  
7 in this matter in April 2023 and testified under oath that neither was an inventor of nor contributed  
8 to any of the claims of the '071 Patent.

9 73. The allegations in Paragraph 73 of the Amended Counterclaim are legal  
10 conclusions to which no response is required. To the extent a response is required, Utherverse  
11 Gaming denies the allegations contained in Paragraph 73 of the Amended Counterclaim, including  
12 but not limited to the suggestion that Flesch and/or Andrew made any contribution to the subject  
13 matter claimed in the '071 Patent.

14 74. Paragraph 74 of the Amended Complaint includes legal conclusions to which no  
15 response is required. Utherverse Gaming admits that Flesch and Andrew were listed as co-  
16 inventors along with Brian Shuster and Gary Shuster on the '531 provisional application and that  
17 the '071 Patent claims priority to the '531 provisional. Utherverse Gaming admits that Flesch and  
18 Andrew were also listed as co-inventors on Canadian application no. CA2685353 and PCT  
19 application no. WO/2008/109798 but denies that those applications are "substantially identical" to  
20 the '071 Patent. Utherverse Gaming denies the remainder of the allegations in Paragraph 74.

21 75. The allegations in Paragraph 75 of the Amended Counterclaim are legal  
22 conclusions to which no response is required. To the extent a response is required, Utherverse  
23 Gaming denies the allegations contained in Paragraph 75 of the Amended Counterclaim, including  
24 but not limited to the suggestion that Brian and/or Gary Shuster paid Flesch and Andrew any sum  
25 of money for the purpose of securing signatures on declarations regarding inventorship of the '071  
26 Patent or as an inducement related to a prospective buyer having identified an alleged gating issue

1 concerning inventorship.

2 76. The allegations in Paragraph 76 of the Amended Counterclaim are legal  
3 conclusions to which no response is required. To the extent a response is required, Utherville  
4 Gaming denies the allegations contained in Paragraph 76 of the Amended Counterclaim.

5 **V. RESPONSE TO EPIC'S PRAYER FOR RELIEF**

6 Utherville Gaming denies that Epic is entitled to any of the relief that it seeks in the Prayer  
7 for Relief and further denies that Epic is entitled to any relief whatsoever against Utherville  
8 Gaming. Utherville Gaming asks the Court to deny any and all of the relief requested by Epic in  
9 its Amended Counterclaim. Further, and to the extent that the Amended Counterclaim's Prayer  
10 for Relief includes any factual allegations, Utherville Gaming denies those allegations.

11 **VI. JURY DEMAND**

12 Utherville Gaming admits that the Amended Counterclaim sets forth a demand for trial by  
13 jury. Utherville Gaming likewise demands a trial by jury on all issues so triable.

14 **VII. AFFIRMATIVE DEFENSES**

15 **First Affirmative Defense**

16 Epic's Amended Counterclaim, in whole or in part, fails to state a cause of action upon  
17 which relief may be granted.

18 **VIII. PRAYER FOR RELIEF**

19 Wherefore, Utherville Gaming respectfully requests that this Court enter judgment in its  
20 favor and against Epic as follows:

- 21 a) a judgment and order that Epic's Amended Counterclaim is denied in its entirety;  
22 b) a judgment, order, and award of the relief requested in Utherville Gaming's  
23 Complaint; and  
24 c) such other and further relief the Court deems just and proper.

1 DATED this 17th day of August, 2023

Respectfully submitted,

2 /s/ Emily C. McNally

3 By: Emily C. McNally (WSBA No. 60710)

**POLSINELLI PC**

1000 Second Avenue, Suite 3500

Seattle, WA 98104

Tel: 206-393-5400

Fax: 206-393-5401

Email: emcnally@polsinelli.com

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5  
6 *Of Counsel:*

7 Colby B. Springer (admitted pro hac vice)

Miya Yusa (admitted pro hac vice)

8 **POLSINELLI LLP**

Three Embarcadero Center, Suite 2400

9 San Francisco, CA 94111

10 Tel: 415-248-2100

Fax: 415-248-2101

11 Email: cspringer@polsinelli.com

Email: myusa@polsinelli.com

12 Melenie Van (admitted pro hac vice)

13 **POLSINELLI LLP**

2049 Century Park East, Suite 2900

14 Los Angeles, CA 90067

15 Tel: (310) 229-1355

Fax: (415) 276-8959

16 Email: mvan@polsinelli.com

Mark T. Deming (admitted pro hac vice)

**POLSINELLI PC**

150 N. Riverside Place, Suite 3000

Chicago, IL 60606

Tel: 312-819-1900

Fax: 312-819-1901

Email: mdeming@polsinelli.com

Jonathan Spivey (admitted pro hac vice)

**POLSINELLI PC**

1000 Louisiana Street, Suite 6400

Houston, TX 77002

Tel.: (713) 374-1600

Fax: (713) 374-1601

Email: jspivey@polsinelli.com

Attorneys for Plaintiff

UTHERVERSE GAMING LLC